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48TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 203.

U. S. Congress. House. Committee on Military affairs.

CAMP DOUGLAS MILITARY RESERVATION, UTAH.

FEBRUARY 5, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DIBRELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 1782.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 1782) to authorize the Secretary of War to relinquish and turn over to the Interior Department certain parts of the Camp Douglas military reservation in the Territory of Utah, having had the same under consideration, respectfully submit its following report, which was adopted by the Military Committee, House of Representatives, in the Forty-sixth Congress of the United States, and recommend the passage of said bill.

Said report, made to the Forty-sixth Congress, is as follows:

Mr. DIBRELL, from the Committee on Military Affairs, submitted the following report to accompany bill H. R. 1287.

The Committee on Military Affairs, to whom was referred the bill (H. R. 1287) to authorize the Secretary of War to relinquish and turn over to the Interior Department certain parts of the Camp Douglas military reservation, in the Territory of Utah, have had the same under consideration, and submit the following report:

This bill, which, by its terms, authorizes the Secretary of War to relinquish and turn over to the Department of the Interior, for restoration to the public domain, a certain portion of the Camp Douglas military reservation, in the Territory of Utah, is for the relief of Mr. Charles Popper, a citizen of the United States, resident in said Territory of Utah.

In the last Congress a bill of similar import to that now under consideration was introduced into the Senate and referred to the Committee on Military Affairs. That committee considered it, and made a unanimous report in its favor. It was placed upon the calendar, but Congress adjourned before it was reached.

From the record filed in the case, it appears by Executive Document No. 97, House of Representatives, first session Forty-fourth Congress, that Mr. Charles Popper settled in the Territory of Utah, in the year 1864, and that he purchased of certain herders of cattle, then settled upon lands now comprised within the military reservation of Camp Douglas, their possessory rights thereupon, together with certain improvements, consisting of a log cabin and corral, for the sum of $800. Immediately thereafter he erected a slaughter-house and corral on the said land, at an outlay of $2,000, dug a ditch of a quarter of a mile in length, laid pipes from a certain spring contiguous to the slaughter-house, at an additional cost of $500. In the year 1865 he erected a cut-stone rock building thereon, at the cost of $14,000, and expended in other improvements, such as out-houses, stables, &c., not less than $10,000 additional, making the total outlay upon said land the sum of $26,500. He has occupied said premises and held peaceable possession thereof ever since.

At this time (1865) the land was unsurveyed, and no land-office had been established by the Government in Utah Territory. On September 3, 1867, however, and prior to any survey, the extension of the Camp Douglas military reservation was ordered to be established by the President, and was so announced in General Order No. 66, headquarters Department of the Platte, December 17, 1869. It will be observed that this

reservation was established in 1867, but it does not appear to have been definitely located nor surveyed until 1869. Therefore, prior to this survey, Mr. Popper was unapprised that the land upon which he had settled and made these large and expensive improvements was in any wise embraced within a military reservation, and the survey of 1869 was his first information in the premises, after he had occupied the same and paid city, county, and Territorial taxes thereon for nearly four years.

It appears from the sworn statement of General George R. Maxwell, late register of the United States land-office at Salt Lake City, Utah Territory, that Mr. Popper took necessary steps, so soon as the land-office was established, to protect his claim, and procure a title to the lands occupied by him, and made proof of his occupation thereof, his purchase from a previous owner in 1864, and the erection by him of other improvements thereon, at an outlay of large sums of money, which papers were all forwarded to the General Land Office at Washington, with the recommendation that Mr. Popper be allowed to purchase the same. But this purchase, as of necessity, could not be permitted, because of the subsequent extension of the said military reservation.

Upon the occupation of said reservation by the military authorities, the fact of Mr. Popper's occupation of a portion thereof, together with a statement of the improvements erected thereon by him, was brought to the attention of the Secretary of War, under the general practice adopted of forcing all squatters to remove from military reservations when the same are established or extended.

The following is the correspondence, through the various military channels, in reference to Mr. Popper's case, until Lieut. Gen. P. H. Sheridan, of date Chicago, December 28, 1875, upon a review of the entire premises, recommends *that the Government do relinquish so much of the northwestern corner of the reservation as embraces the apparently just claim of Mr. Charles Popper:*

HEADQUARTERS CAMP DOUGLAS, UTAH TERRITORY,
December 11, 1874.

SIR: In compliance with your instructions, dated Headquarters Department Platte, Omaha, Nebr., September 8, 1874, to remove all trespassers from the reservation at Camp Douglas, I have the honor to submit the following report:

Upon investigation the following trespassers were found:

First. Mrs. Ann Elmer has a small two-story house, basement built of red sandstone, upper story of adobe, of little value, situated near the southern line of the reservation, and built before the extension. Mrs. Elmer was notified to remove said building; she has not complied, and it will be taken down as soon as men can be spared for that purpose.

Second. Frame building near northwest corner of reservation, occupied by Mrs. ———; built by mistake on the reservation; notice given, and the house has been removed.

Third. Old brick mills and kiln near west line of reservation, of little value; notice given and complied with.

Fourth. A small adobe house near west line of reservation, owned and occupied by Stephen Pope and wife—very old people—who evidently have been deceived in the purchase of their supposed little property. Upon investigation of their papers, I find that the lot was certified by the Salt Lake authorities to Christian E. Norholm, March 24, 1867. No transfer has been made by Norholm to John Baswell, who made a conveyance to Pope, which was recorded March 24, 1869. No action taken in this case, as I would deem it cruel to dispossess these old people at once.

"Fifth. Two temporary buildings (board) for ice-houses, half-way between post and west line of reservation, owned by John Heil, who claims to have had verbal permission from Lieut. Col. H. A. Morrow; notice to vacate given; action suspended until petition herewith, marked A, can be considered by the department commander. I would recommend that he be permitted to use his ice-houses until next fall, and then required to vacate, as he has been to considerable labor and expense.

Sixth. Extensive and valuable improvements near north line of reservation (see plat inclosed, together with papers in the case, Nos. 1, 2, 3, 4), belonging to Charles Popper, beef-contractor.

These improvements consist of a large sandstone building, suitable for the manufacture of soap and candles; three frame buildings, cattle and pig pens, and considerable fencing, as set forth in Mr. Popper's declaration, and which has been verified by a personal examination in connection with the papers submitted. I have made diligent inquiry and find these improvements were made as stated previous to the extension of the reservation, as declared by the President of the United States, September 3, 1867, and that Charles Popper has an equitable claim for the favorable consideration of the proper authorities.

I have the honor to be, most respectfully, your obedient servant,

JNO. E. SMITH,
Colonel Fourteenth Infantry, Commanding.

To the ASSISTANT ADJUTANT-GENERAL,
Headquarters Department of the Platte, Omaha, Nebr.

HEADQUARTERS DEPARTMENT OF THE PLATTE,
Omaha, Nebr., December 24, 1874.

Respectfully forwarded to headquarters Military Division of the Missouri. Attention is invited to indorsements on the within inclosures.

E. O. C. ORD,
Brigadier-General Commanding.

[Second indorsement.]

HEADQUARTERS MILITARY DIVISION MISSOURI,
Chicago, December 31, 1874.

Respectfully forwarded to the headquarters of the Army.
In the absence of the Lieutenant-General.

R. C. DRUM,
Assistant Adjutant-General.

[Third indorsement.]

HEADQUARTERS OF THE ARMY,
Saint Louis, January 5, 1875.

Respectfully forwarded to the Secretary of War.

W. T. SHERMAN,
General.

[Fourth indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, January 19, 1875.

Respectfully submitted to the Secretary of War, inviting attention to accompanying brief and report.

E. D. TOWNSEND,
Adjutant-General.

[Fifth indorsement.]

WAR DEPARTMENT, *April* 12, 1875.

Respectfully returned to the Adjutant-General.
The views and action of General Ord in all of the within cases, as well as his recommendation regarding the appointment of a board of officers, not stationed at Camp Douglas, to examine into the merits of any claim of Charles Popper to further compensation for improvements, are approved.
The board will be ordered by the department commander.

WM. W. BELKNAP,
Secretary of War.

[Received back Adjutant-General's Office April 13, 1875.]

[Sixth indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, April 15, 1875.

Respectfully returned, through headquarters of the Army, to the commanding general Department of the Platte, for appropriate action, inviting attention to the decision and orders of the Secretary of War, indorsed hereon.
These papers to be returned to this office with report of action and proceedings of board of officers.
By order of the Secretary of War:

E. D. TOWNSEND,
Adjutant-General.

[Received back Adjutant-General's Office June 10, 1875.]

[Seventh indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, June 11, 1875.

Respectfully returned to the Secretary of War, with proceedings of a board of officers, convened by orders from headquarters Department of the Platte, dated May 7, 1875, in the case of Mr. Charles Popper.

E. D. TOWNSEND,
Adjutant-General.

2993 Adjutant-General's Office accompaning.

[Eighth indorsement.]

WAR DEPARTMENT, *June* 19, 1875.

Respectfully returned to the Adjutant-General of the Army, calling attention to the fact that General Crook's order convening the board of officers does not appear to have been exactly conformable to the directions of the Secretary of War. The Secretary of War approved of the views and recommendations of General Ord. These were as follows: * * * "I therefore disapprove of any commission to purchase land being given this man, because of the various privileges and favors granted him of occupying gratis a valuable and choice location, well supplied with a never-failing spring. * * * I recommend that a board of officers, not stationed at Camp Douglas, be ordered to examine into the merits of any claim of Mr. Popper to further compensation for improvements, and after assessing the rent which the land could have brought the United States on Mr. Popper, at current rates, the difference, if any, between the actual present worth of Mr. Popper's original improvements, not the farm or appurtenances thereto, and what Mr. Popper would have had to pay as rent to private parties, be allowed him."

Let the papers be returned to the general commanding the Department of the Platte with directions to reconvene the board of officers for the purpose of carrying out the foregoing recommendations of General Ord. Congress alone can permit Mr. Popper to acquire a title to any part of the reservation. While this may prove, after all, the best settlement of the claim, it is not the mode heretofore approved by the Secretary of War, and for which the services of the board of officers were particularly required.

WM. W. BELKNAP,
Secretary of War.

[Received back Adjutant-General's Office June 24, 1875.]

[Ninth indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, June 25, 1875.

Respectfully returned, through headquarters of the Army, to the commanding general Department of the Platte, who will cause the board of officers to be reconvened in accordance with the instructions of the Secretary of War, contained in preceding indorsement (8th).

These papers to be returned as heretofore directed.

By order of the Secretary of War:

THOMAS M. VINCENT,
Assistant Adjutant-General.

[Tenth indorsement.]

HEADQUARTERS OF THE ARMY,
Saint Louis, June 28, 1875.

Respectfully transmitted, through headquarters Division of the Missouri.

By command of General Sherman:

WM. D. WHIPPLE,
Assistant Adjutant-General.

[Eleventh indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
Chicago, June 29, 1875.

Respectfully returned to the commanding general Department of the Platte.

By command of Lieutenant-General Sheridan:

R. C. DRUM,
Assistant Adjutant-General.

[Twelfth indorsement.]

HEADQUARTERS DEPARTMENT OF THE PLATTE,
Omaha, Nebr., November 13, 1875.

Respectfully returned to Col. I. N. Palmer, Second Cavalry, president of the board of officers convened by paragraph 6, Special Order No. 55, and reconvened per paragraph 2, Special Order No. 123, current series, from these headquarters (copy inclosed).

By command of Brigadier-General Crook:

GEO. D. RUGGLES,
Assistant Adjutant-General.

[Received back December 15, 1875, with proceedings indorsed, and certified to Colonel Palmer, Second Cavalry, president of the board, for completion, December 16, 1875; back, with correction made, December 23, 1875.]

[Thirteenth indorsement.]

HEADQUARTERS DEPARTMENT OF THE PLATTE,
Omaha, Nebr., December 23, 1875.

Respectfully returned, through headquarters Military Division of the Missouri, to the Adjutant-General of the Army, with new proceedings in the case, which are approved.

GEORGE CROOK,
Brigadier-General, Commanding.

[Fourteenth indorsement.]

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
Chicago, December 28, 1875.

Respectfully returned to the Adjutant-General of the Army, recommending that the Government relinquish so much of the northwestern corner of the reservation as embraces the apparently just claim of Mr. Charles Popper.

This is, in my judgment, the best way to settle this question, especially as that portion of the reservation is not necessary to the wants of the public service at Camp Douglas.

P. H. SHERIDAN,
Lieutenant-General, Commanding.

[Received back Adjutant-General's Office December 31, 1875, with three inclosures, twelve indorsements.]

[Fifteenth indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, January 4, 1876.

Respectfully returned to the Secretary of War, inviting attention to thirteenth and fourteenth indorsements hereon.

E. D. TOWNSEND,
Adjutant-General.

The merits of Mr. Popper's claim to the lands in question were investigated by a board of officers, convened under authority of the War Department, consisting of Col. I. N. Palmer, Second Cavalry; Col. F. F. Flint, Fourth Infantry, and First Lieut. George O. Webster, adjutant Fourth Infantry, which board assembled in pursuance of the following order:

[Special Order No. 55.—Extract.]

HEADQUARTERS DEPARTMENT OF THE PLATTE,
Omaha, Nebr., May 7, 1875.

* * * * * * *

V. A board of officers, to consist of Col. I. N. Palmer, Second Cavalry; Col. F. F. Flint, Fourth Infantry, and First Lieut. George O. Webster, adjutant Fourth Infantry, will assemble at Camp Douglas, Utah Territory, at 10 o'clock a. m., on Thursday, May 13, 1875, or as soon thereafter as practicable, to examine into the merits of any claim of Mr. Charles Popper to further compensation for improvements on the military reservation of Camp Douglas, and to investigate generally and thoroughly, and report fully, upon the subject of the occupation of part or parts of the said reservation by the said Mr. Charles Popper or his agents.

* * * * * * *

By command of Brigadier-General Crook:

GEO. D. RUGGLES,
Assistant Adjutant-General.

After taking testimony and going through various deliberations, with the usual formalities and routine incident to such proceedings, the board found for the merits of Mr. Popper's claim, but suggested that the only way he could obtain proper relief would be by act of Congress, which body would either direct a redrawing of the lines of the Camp Douglas Reservation, so as to exclude the land in question, or appropriate money to pay a just and reasonable price for the improvements which were on the land in question at the time it was enveloped in the military reservation, as reestablished in 1867. But the board also found that the land in question, *were it not for the improvements made upon it by Mr. Popper, would be of no value to the United States or to any private party as a place to rent.* Hence, the improvements being of no use to the

Government, by reason of the land being of no value to the Government for any purpose, it would follow that Congress could not justifiably appropriate money to pay for improvements valueless to the Government. The remedy, therefore, suggested by Lieutenant-General Sheridan was accepted by the Department of War, and the Secretary submitted to the House of Representatives, of date January 20, 1876, the following communication, transmitting the papers which have in part been quoted herein by your committee:

[House Ex. Doc. No. 97. Forty-fourth Congress, first session.]

Letter from the Secretary of War transmitting correspondence relating to the military reservation at Camp Douglas, Utah

WAR DEPARTMENT, *January* 20, 1876.

The Secretary of War has the honor to submit to the House of Representatives the following communication:

The military reservation of Camp Douglas, Utah, as ordered by the President, September 3, 1867, included certain valuable improvements made in good faith by Charles Popper, among which were a slaughter-house and a stone-built soap-factory. The improvements are in a hollow near the northwest corner of the reservation. The matter has been investigated by a board of officers, and the following recommendation of Lieutenant-General Sheridan meets the approval of the Secretary of War: "That the Government relinquish so much of the northwest corner of the reservation as embraces the apparently just claim of Mr. Charles Popper. This is, in my judgment, the best way to settle this question, especially as that portion of the reservation is not necessary to the wants of the public service at Camp Douglas." The act of June 22, 1874, concerning certain reservations in Arizona, may be suggested as a precedent in point of form.

Attention is also invited to a claim by Stephen Pope for improvements included within the same reservation. In this case a board of officers has recommended the payment by the Government of $150 for any losses sustained by Pope in consequence of removal from the reservation, but the Secretary of War concurs in the opinion reported by the Acting Quartermaster-General—

"That the payment * * * recommended by the board * * * cannot be made without the sanction of Congress. The case appears to be similar to that of Matthew Palen and others, for property taken by the Government in the extension of the Camp Mohave Reservation, favorably settled by act approved February 19, 1873."

Claims of similar character in the experience of this Department have been not infrequent. With a view to some examination of them when presented, General Order No. 74, Adjutant-General's Office, November 2, 1869, provided:

"Hereafter no squatter or citizen will be permitted to enter or reside upon a military reservation, unless he be in the employment of the Government, or permitted by the department commander. * * * Where parties are already in possession, with valuable improvements, the department commander will cause an investigation to be made, and submit each case separately for the decision and orders of the Secretary of War."

It is believed, however, that compensation for the loss of such improvements cannot, in general, be properly made without the special sanction of Congress, except in cases arising within the old Territory of Oregon, where, by section 9 of the act of February 14, 1853, being "An act to amend an act entitled 'An act to create the office of surveyor-general of the public lands of Oregon,'" &c., it is provided as follows:

"That if it shall be deemed necessary, in the judgment of the President, to include in any such reservation the improvement of any settler made previous to such reservation, it shall in such case be the duty of the Secretary of War to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto out of any money in the Treasury not otherwise appropriated."

In accordance with the general policy of encouraging the settlement of the public domain, this act recognizes the justice of making compensation to settlers who have not yet acquired title to their lands, but who have been unexpectedly deprived of the fruits of their labor by the action of the Government. It is respectfully submitted to the consideration of Congress whether some legislative provision, similar to that contained in the above-recited act of Congress relating to the former Territory of Oregon, ought not to be made applicable to military reservations everywhere.

The papers relating to the above-mentioned claims of Charles Popper and Stephen Pope are herewith transmitted.

WM. W. BELKNAP,
Secretary of War.

The board of officers convened for investigation and report on Mr. Popper's claim found, among other facts, as stated in the following extract from their proceedings:

"Col. John E. Smith, Fourteenth Infantry, commanding at Camp Douglas, gives it as his opinion that Mr. Popper's property is in no way necessary for military purposes. It is some distance from the main road leading from Camp Douglas to Salt Lake City. The slaughter-house is in no way a nuisance to the post; a considerable portion of the ground is unfit for any purpose, being the side of a mountain, or broken up in ravines or ditches, and is so located that it will probably never be required for any public purposes.

"Although the order convening the board in this case does not direct that an opinion be expressed, it is believed that it was intended that it should do so, and it is the opinion of the board that Mr. Popper should be permitted to acquire a title to any portion of the land designated in the accompanying map as Popper's property which was not included in the first reservation of one mile square, and was brought into the reservation, as declared by the order of the President, September 3, 1867.

"But, as it is considered that it would be for the best interests of the service for the Government to have possession of the lower half of the southernmost portion of Mr. Popper's land, it is recommended that if any permission is accorded to Mr. Popper to purchase, that such southern half be retained, giving him, Popper, an equal amount of land immediately to the westward of the northern half of such southern portion. The board inclose a map showing the proposed division of the 'quarter-section' referred to. (Map is dated Salt Lake City, Utah Territory, May 15, 1875.)

"Mr. Popper has declared himself satisfied with such an arrangement as the one just referred to."

From this it would appear that it would be for the best interests of the Government to have possession of the lower half of the southernmost portion of Mr. Popper's land, allowing Mr. Popper an equal amount of land immediately to the westward of the northern half of such southern portion, a proposition to which Mr. Popper appears to have acceded. The map referred to and forwarded by the board, showing the proposed division of the quarter-section, is on file in the office of the Clerk of the House of Representatives, and the description of the land as stated in the bill, containing $151\frac{81}{100}$ acres, conforms to and agrees with the map so transmitted by the said board of officers to the Secretary of War. Hence, so far as this matter is concerned, the land proposed by the bill to be turned over by the Secretary of War to the Secretary of the Interior, for the purpose of allowing Mr. Popper to enter the same at Government rates, in view of the equities of his claim, is the land recommended by the said board of officers, in part by substitution as aforesaid, and embraces the improvements erected by Mr. Popper, and which is, as found by the said board, not needed for military purposes.

It appears affirmatively by the record that Mr. Popper has never exercised the right of pre-emption conferred by existing laws, and, therefore, still retains the privilege. Your committee find, the premises considered, that Mr. Popper's settlement on said land was *bona fide*, and that at the time of his said settlement he could have been in no wise advised of the probability of its being included within any prospective extension of the military reservation. He had made large outlay in the way of erecting improvements prior to any action taken by the authorities to set the land aside for military purposes, and had been assessed for and paid taxes upon the same also prior to the establishment of the military reservation. He has always occupied the premises and retained peaceable possession of the same. The land being not needed for military purposes and the improvements of no value to the Government, it would seem proper to afford him the relief he seeks, especially since the whole matter has been formally inquired into and reported upon by the military authorities, through a board consisting of officers of the highest character, whose action, together with the conclusions of the Lieutenant-General of the Army, and the recommendations of the Secretary of War, ought to be conclusive upon Congress.

The committee therefore recommend the passage of the bill.

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